

EDUCATION DEPARTMENT[281]

Adopted and Filed

Rule making related to open enrollment

The State Board of Education hereby amends Chapter 6, “Appeal Procedures,” Chapter 17, “Open Enrollment,” and Chapter 36, “Extracurricular Interscholastic Competition,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 256.7(5) and 2022 Iowa Acts, House File 2589.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 282.18 and 290.1 as amended by 2022 Iowa Acts, House File 2589.

Purpose and Summary

2022 Iowa Acts, House File 2589, division VI, eliminates open enrollment deadlines, eliminates remaining open enrollment appeal rights to the State Board, and makes conforming changes, including changes to athletic eligibility. The division is effective upon enactment. This rule making reflects the changes made by House File 2589.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on August 24, 2022, as **ARC 6482C**. This rule making was also adopted and filed emergency and published in the Iowa Administrative Bulletin as **ARC 6483C** on the same date.

A public hearing was held on September 13, 2022, at 9:30 a.m. in the State Board Room, Second Floor, Grimes State Office Building, Des Moines, Iowa. One person offered comment on behalf of two organizations: the Urban Education Network and the Rural School Advocates of Iowa. In addition, several other public comments were received. The Department’s responses to the comments are as follows:

Item 2. One commenter noted that a cross-reference in subrule 17.3(2) to rule 441—17.5(282), which is to be rescinded, should be deleted. The reference to that rule was already stricken in the Adopted and Filed Emergency **ARC 6483C**. No change is necessary. The commenter also suggested that additional district duties from elsewhere in Chapter 17 should be consolidated in subrule 17.3(2). The suggested change makes sense; however, the Department will defer it to a comprehensive rewrite of this chapter as part of the five-year rules review. The entire chapter would benefit from resequencing and reorganization.

Item 7. Based on staff review and to be consistent with the statutory amendment, the words “eligible to be” have been added so that a parent of a student who is in an early childhood special education program may elect open enrollment at any time, regardless of when the student was determined eligible for special education.

Item 8. One commenter noted that initial placement of a prekindergarten student in special education is never relevant for determining “good cause” for high school athletic eligibility. The language in the rule was taken directly from the statute; however, the statutory language is an artifact from when “good cause” had a broader definition. To be consistent with the statute and to be practical, the reference to prekindergarten students becoming eligible for special education has been removed and a “catch-all” clause has been included at the end of the paragraph.

Item 9. Two commenters expressed approval that the rule making maintained language that a petition for attendance in an alternate receiving district is effective at the start of the next school year. Requests

for open enrollment under Iowa Code section 282.18 and Chapter 17 are for a minimum of one year at a time; however, since a parent may elect open enrollment at any time during the school year, Item 9 has been revised to refer to calendar years, not school years.

Both commenters asked for rules language to prevent parents from ending open enrollment, returning to the district of residence, and seeking open enrollment to a new district before the expiration of one year. While understanding the commenters' concerns about difficulties for school administrators and business officials, the Department has determined there is no statutory authority for this restriction. No changes have been made.

Item 10. One commenter requested that the term "timely" be stricken because there are no more deadlines. The Department has made that change. Additionally, based on Department staff review, certain references to attendance in another school district in Item 10 and Item 11 were determined to be superfluous and have been stricken.

Item 11. Two commenters noted that references to eliminating kindergarten students from the provisions of subrule 17.8(7) are inconsistent with Senate File 2589. The commenters' concerns are valid, and the sentence has been stricken.

Item 13. One commenter suggested that language regarding the teacher leadership supplement is now superfluous and "code clutter" because all districts receive such funding. The point is sound; however, the language is from Iowa Code section 282.18(7)"b." To address this concern, the Department has added a cross-reference to the relevant Iowa Code language.

Items 14 and 15. These items received no comments; however, they have been amended to change the term "non-English speaking" to "English learner" in accordance with 2022 Iowa Acts, Senate File 2128.

Item 16. A Department staff review of the emergency rules concluded this item could be simplified by adding "for any reason" to the first sentence and striking the second sentence as surplus. The Department has made this change.

Item 17. Two commenters noted that the reference to the October 1 count date in this item is now irrelevant. The Department agrees. Since no other content remains in the subrule, it has been rescinded and reserved.

Adoption of Rule Making

This rule making was adopted by the State Board on November 16, 2022.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. According to the Notes on Bills and Amendments for 2022 Iowa Acts, House File 2589, "Open enrollment applications and transportation reimbursements are expected to increase; however, the extent to which each district may experience a fiscal impact cannot be estimated at this time."

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's

meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 18, 2023, at which time the Adopted and Filed Emergency rule making is hereby rescinded.

The following rule-making actions are adopted:

ITEM 1. Amend **281—Chapter 6**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 256.7(6), 275.16, ~~282.18, 282.18(5), 282.32, 285.12,~~ and Iowa Code chapter 290 and chapter 17A.

ITEM 2. Amend subrule 17.3(1) as follows:

17.3(1) Parent/guardian responsibilities. ~~On or before March 1 of the school year preceding the school year for which open enrollment is requested, a~~ A parent/guardian shall formally notify both the district of residence and the receiving district of the request for open enrollment. The request for open enrollment shall be made on forms provided by the department of education. ~~Failure by the parent to send the form to the resident district and receiving district by the deadline may cause the application to be considered untimely.~~ The parent/guardian is required to indicate on the form if the request is for a pupil requiring special education, as provided by Iowa Code chapter 256B. The forms for open enrollment application are available from each public school district and area education agency and from the state department of education.

ITEM 3. Amend subrule 17.3(2) as follows:

17.3(2) School district responsibilities.

a. The board of the resident district shall take no action on an open enrollment request except for a request made under rule ~~281—17.5(282) or 281—17.14(282).~~

b. The board of the receiving district shall act on an open enrollment request ~~no later than June 1 of the school year preceding the school year for which the request is made.~~

(1) The receiving district superintendent shall provide notification of either approval or denial of the request to the parent/guardian and to the resident district within five days of board action.

(2) As an alternative procedure, the receiving board may by policy authorize the superintendent to approve, but not deny, applications ~~filed on or before March 1. The board of directors of a receiving school district may adopt a policy granting the superintendent of the school district authority to approve open enrollment applications submitted after the March 1 deadline, but the board of the receiving district shall take action to approve the request if good cause exists. The board shall have the discretion to determine the scope of the authorization. The authorization may be for regular applications filed on or before March 1, good cause applications, and kindergarten applications filed on or before September 1, or any combination that the board determines. The same timelines for approval, forwarding, and notification shall apply.~~

c. The parent/guardian may withdraw an open enrollment request any time prior to the ~~first day of school in the resident district board's action on the application. After the first day of school, an open enrollment request can only be changed during the term of the approval by the procedures of subrules 17.8(4), 17.8(5), 17.8(6), and 17.8(7).~~

d. The board of the receiving district shall comply with the provisions of rule ~~281—17.11(282)~~ if the application for open enrollment is for a pupil requiring special education as provided by Iowa Code chapter 256B.

e. Notification to parents.

(1) By September 30 of each school year, all districts shall notify parents of the following:

1. ~~Open enrollment deadlines;~~

2. 1. Transportation assistance; and

3. ~~That within 30 days of a denial of an open enrollment request by a district board of education, the parent/guardian may file an appeal with the state board of education only if the open enrollment~~

~~request was based on repeated acts of harassment or a serious health condition of the pupil that the district cannot adequately address; and that all other denials must be appealed to the district court in the county in which the primary business office of the district is located; and~~

4. 2. Possible loss of athletic eligibility for open enrollment pupils.

(2) This notification may be published in a school newsletter, a newspaper of general circulation, a website, or a parent handbook provided to all patrons of the district. This information shall also be provided to any parent/guardian of a pupil who enrolls in the district during the school year.

ITEM 4. Amend subrule 17.3(3) as follows:

17.3(3) Exception to process when resident district is under court-ordered desegregation. If the resident district has a court-ordered desegregation plan, the ~~request for open enrollment shall be filed solely with the district of residence on or before March 1 of the school year preceding the school year for which open enrollment is requested.~~ The superintendent of the resident district may deny a request under this subrule unless the request is made on behalf of a student whose sibling already actively participates in open enrollment to the same receiving district to which open enrollment is sought for this student. A denial by the superintendent may be appealed to the board of the district in which the request was denied. A decision of the local board to uphold the denial may only be appealed to the district court in the county in which is located the primary business office of the district that upheld the denial of the open enrollment request.

ITEM 5. Rescind and reserve rule **281—17.4(282)**.

ITEM 6. Rescind and reserve rule **281—17.5(282)**.

ITEM 7. Amend rule 281—17.7(282) as follows:

281—17.7(282) Open enrollment for kindergarten or certain prekindergarten programs. ~~While the regular time frame in requesting open enrollment is that an application should be made no later than March 1 of the school year preceding the school year for which the enrollment is requested, a~~ A parent/guardian requesting to enroll of a kindergarten pupil in a district other than the district of residence or a parent/guardian of a prekindergarten student enrolled in a special education program and eligible to be included in the resident school district's basic enrollment under Iowa Code section 257.6(1) "a"(1) may make such application on or before September 1 of that school year request to enroll the pupil or student in a district other than the district of residence. In considering an application for a kindergarten pupil under this rule, the resident and the receiving district are not precluded from administering board-adopted policies related to insufficient classroom space, the requirements of rule 281—17.11(282), or the requirements of a desegregation order.

As an alternative procedure, the receiving board may by policy authorize the superintendent to approve, but not deny, applications filed ~~on or before September 1~~ under this rule. ~~The timelines established in rule 281—17.4(282) shall apply to applications for a pupil under this rule.~~

ITEM 8. Amend paragraph **17.8(2)"k"** as follows:

k. Participates in open enrollment because of circumstances that meet the definition of "good cause," under rule 281—17.4(282). For purposes of this paragraph, "good cause" means a change in a child's residence due to a change in family residence; a change in a child's residence from the residence of one parent or guardian to the residence of a different parent or guardian; a change in the state in which the family residence is located; a change in a child's parents' marital status; a guardianship or custody proceeding; placement in foster care; adoption; participation in a foreign exchange program; participation in a substance abuse or mental health treatment program; a change in the status of a child's resident district such as removal of accreditation by the state board, surrender of accreditation, or permanent closure of a nonpublic school; revocation of a charter school contract as provided in Iowa Code section 256E.10 or 256F.8; the failure of negotiations for a whole grade sharing agreement, reorganization plan, or dissolution agreement; the rejection of a current whole grade sharing agreement or reorganization plan; or any other reason specified in Iowa Code section 282.18(11) "a"(9).

ITEM 9. Amend subrule 17.8(4) as follows:

17.8(4) *Petition for attendance in an alternative receiving district.* Once the pupil of a parent/guardian has been accepted for open enrollment, attendance in an alternative receiving district under open enrollment can be initiated by filing a petition for change with the receiving district. ~~The petition shall be filed by the parent/guardian with the receiving district on or before March 1 of the year preceding the school year for which the change is requested.~~ The timelines and notification requirements for such a request shall be the same as outlined in subrule 17.3(2). If the request is approved, the alternative district shall send notice of this action to the parent/guardian, to the original receiving district, and to the resident district of the pupil. Petitions for change shall be ~~effectuated at the start of the next school~~ for not less than one year.

~~As an alternative procedure, the receiving and alternative receiving district boards by mutual agreement may effectuate the change in enrollment of an open enrollment pupil at any time following receipt of a written request for such change which is approved by the two boards. The parent/guardian and the resident district board shall be notified of the approval and the date for change in open enrollment within 15 days of the mutual agreement action of the receiving and alternative receiving boards.~~

A pupil in good standing may return to the district of residence at any time following written notice from the parent/guardian to both the resident district and the receiving district.

ITEM 10. Amend subrule 17.8(6) as follows:

17.8(6) *Change in residence when participating in open enrollment.* If the parent/guardian of a pupil who is participating in open enrollment changes the school district of residence during the term of the agreement, the parent/guardian shall have the option to leave the pupil in the receiving district under open enrollment, ~~to open enroll to another school district,~~ or to enroll the pupil in the new district of residence, thus terminating the open enrollment agreement. If the choice is to leave the pupil under open enrollment or to open enroll to another school district, the district of residence, as determined on the date specified in Iowa Code section 257.6(1), shall be responsible for payment of the cost per pupil plus any applicable weightings or special education costs for the balance of the school year. The new district of residence shall be responsible for these payments during succeeding years of the agreement.

If the pupil is to remain under open enrollment or to open enroll to another school district, the parent/guardian shall write a letter, delivered by mail or by hand ~~on or before the date specified in Iowa Code section 257.6(1),~~ to notify the original resident district, the new resident district, and the receiving district of this decision.

~~Timely requests~~ Requests under this rule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2).

ITEM 11. Amend subrule 17.8(7), introductory paragraph, as follows:

17.8(7) *Change in residence when not participating in open enrollment.* If a parent/guardian moves out of the school district of residence, and the pupil is not currently under open enrollment, the parent/guardian has the option for the pupil to remain in the original district of residence as an open enrollment pupil with no interruption in the education program ~~or to open enroll to another school district. This option is not available to the parent/guardian of a student who is entering kindergarten for the first time.~~ The parent/guardian exercising this option shall file an open enrollment request form with the new district of residence for processing and record purposes. ~~This request shall be made on or before the date specified in Iowa Code section 257.6(1).~~ Timely requests Requests under this subrule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2). If the move is on or after the date specified in Iowa Code section 257.6(1), the new district of residence is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment.

ITEM 12. Rescind and reserve subrule **17.8(9)**.

ITEM 13. Amend subrule 17.10(1) as follows:

17.10(1) Full-time pupils. ~~Unless otherwise agreed to in the mediation under paragraph 17.4(6) “b,” for full-time pupils, the~~ The resident district shall pay each year to the receiving district an amount equal to the sum of the state cost per pupil for the previous year; plus any moneys received for the pupil as a result of non-English speaking weighting provided by Iowa Code section 280.4; plus either the teacher leadership supplement state cost per pupil for the previous year as provided in Iowa Code section 257.9(11) or the teacher leadership supplement foundation aid allocation for fiscal year 2017 as provided in Iowa Code section 284.13(1) “e,” whichever the district received, if both the district of residence and the receiving district received either of the supplements pursuant to Iowa Code section 282.18(7) “b”(1). If the pupil participating in open enrollment is also an eligible pupil under Iowa Code section 261E.6 (postsecondary enrollment options program), the receiving district shall pay the tuition reimbursement amount to an eligible postsecondary institution as provided in Iowa Code section 261E.7.

ITEM 14. Amend subrule 17.10(2) as follows:

17.10(2) Dual enrolled pupils. ~~Unless otherwise agreed to in the mediation under paragraph 17.4(6) “b,” for~~ For pupils who receive competent private instruction and are dual enrolled, the resident district shall pay each year to the receiving district an amount equal to .1 times the state cost per pupil for the previous year plus any moneys received for the pupil as a result of ~~non-English speaking~~ English learner weighting provided by Iowa Code section 280.4. However, a pupil dual enrolled in grades nine through twelve shall be counted by the receiving district in the same manner as a shared-time pupil under Iowa Code section 257.6(1) “c.”

ITEM 15. Amend subrule 17.10(3) as follows:

17.10(3) Home school assistance program pupils. ~~Unless otherwise agreed to in the mediation under paragraph 17.4(6) “b,” for~~ For pupils who receive competent private instruction and are registered for a home school assistance program, the resident district shall pay each year to the receiving district an amount equal to .3 times the state cost per pupil under Iowa Code chapter 257 for the previous year plus any moneys received for the pupil as a result of ~~non-English speaking~~ English learner weighting provided by Iowa Code section 280.4.

ITEM 16. Amend subrule 17.10(6) as follows:

17.10(6) Partial-year situations. ~~In the event that the pupil who is under open enrollment withdraws from school, moves into the district of attendance, moves out of state, moves to another district in the state of Iowa and elects to attend that district, graduates at midyear, is allowed to return to the district of residence during the school year, or other similar set of circumstances that result in the pupil no longer attending in the receiving district, payment of cost per pupil will be prorated. If a pupil participating in open enrollment attends school in the receiving district for any reason for less than a full school year, payment from the district of residence to the receiving district shall be prorated on a per diem basis.~~

ITEM 17. Rescind and reserve subrule **17.10(7)**.

ITEM 18. Amend paragraph **36.15(4)“k”** as follows:

k. The student participates in open enrollment because of circumstances that meet the definition of “good cause” under ~~Iowa Code section 282.18(4) “b”~~ 281—paragraph 17.8(2) “k”; or

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/14/22.